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document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) *Time to respond; effect of not responding.* A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under §18.54 or be ordered by the judge.

(4) *Answer.* If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) *Objections.* The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for hearing.

(6) *Motion regarding the sufficiency of an answer or objection.* The requesting party may move to determine the sufficiency of an answer or objection. Unless the judge finds an objection justified, the judge must order that an answer be served. On finding that an answer does not comply with this section, the judge may order either that the matter is admitted or that an amended answer be served. The judge may defer final decision until a prehearing conference or a specified time before the hearing.

(b) *Effect of an admission; withdrawing or amending it.* A matter admitted under this section is conclusively established unless the judge, on motion, permits the admission to be withdrawn or amended. The judge may permit withdrawal or amendment if it would promote the presentation of the merits

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of the action and if the judge is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this section is not an admission for any other purpose and cannot be used against the party in any other proceeding.

§ 18.64 Depositions by oral examination.

(a) *When a deposition may be taken—*

(1) *Without leave.* A party may, by oral questions, depose any person, including a party, without leave of the judge except as provided in paragraph (a)(2) of this section. The deponent's attendance may be compelled by subpoena under §18.56.

(2) *With leave.* A party must obtain leave of the judge, and the judge must grant leave to the extent consistent with §18.51(b):

(i) If the parties have not stipulated to the deposition and:

(A) The deposition would result in more than 10 depositions being taken under this section or §18.65 by one of the parties;

(B) The deponent has already been deposed in the case; or

(C) The party seeks to take the deposition before the time specified in §18.50(a), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time; or

(ii) If the deponent is confined in prison.

(b) *Notice of the deposition; other formal requirements—*(1) *Notice in general.* Except as stipulated or otherwise ordered by the judge, a party who wants to depose a person by oral questions must give reasonable written notice to every other party of no fewer than 14 days. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing documents.* If a subpoena duces tecum is to be served on the deponent, the materials designated for

production, as set out in the subpoena, must be listed in the notice or in an attachment. If the notice to a party deponent is accompanied by a request for production under § 18.61, the notice must comply with the requirements of § 18.61(b).

(3) *Method of recording*—(i) *Method stated in the notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the judge orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(ii) *Additional method.* With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the judge orders otherwise.

(4) *By remote means.* The parties may stipulate—or the judge may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this section, the deposition takes place where the deponent answers the questions.

(5) *Deposition officer's duties*—(i) *Before the deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before a person having power to administer oaths. The officer must begin the deposition with an on-the-record statement that includes:

(A) The officer's name and business address;

(B) The date, time, and place of the deposition;

(C) The deponent's name;

(D) The officer's administration of the oath or affirmation to the deponent;

(E) The identity of all persons present; and

(F) The date and method of service of the notice of deposition.

(ii) *Conducting the deposition; avoiding distortion.* If the deposition is recorded nonstenographically, the officer must repeat the items in paragraphs (b)(5)(i)(A) and (B) of this section at the beginning of each unit of the recording medium. The deponent's and

attorneys' appearance or demeanor must not be distorted through recording techniques.

(iii) *After the deposition.* At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) *Notice or subpoena directed to an organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (b)(6) does not preclude a deposition by any other procedure allowed by these rules.

(c) *Examination and cross-examination; record of the examination; objections; written questions*—(1) *Examination and cross-examination.* The examination and cross-examination of a deponent proceed as they would at the hearing under the applicable rules of evidence. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under paragraph (b)(3)(i) of this section. The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) *Objections.* An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive

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manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the judge, or to present a motion under paragraph (d)(3) of this section.

(3) *Participating through written questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) *Duration; sanction; motion to terminate or limit*—(1) *Duration.* Unless otherwise stipulated or ordered by the judge, a deposition is limited to 1 day of 7 hours. The judge must allow additional time consistent with §18.51(b) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanction.* The judge may impose an appropriate sanction, in accordance with §18.57, on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) *Motion to terminate or limit*—(i) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(ii) *Order.* The judge may order that the deposition be terminated or may limit its scope and manner as provided in §18.52. If terminated, the deposition may be resumed only by the judge's order.

(e) *Review by the witness; changes*—(1) *Review; statement of changes.* On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(i) To review the transcript or recording; and

(ii) If there are changes in form or substance, to sign a statement listing

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the changes and the reasons for making them.

(2) *Changes indicated in the officer's certificate.* The officer must note in the certificate prescribed by paragraph (f)(1) of this section whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) *Certification and delivery; exhibits; copies of the transcript or recording; filing*—(1) *Certification and delivery.* The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the judge orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the party or the party's representative who arranged for the transcript or recording. The party or the party's representative must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and tangible things*—(i) *Originals and copies.* Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(A) Offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(B) Give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

(ii) *Order regarding the originals.* Any party may move for an order that the originals be attached to the deposition pending final disposition of the proceeding.

(3) *Copies of the transcript or recording.* Unless otherwise stipulated or ordered by the judge, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the

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recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) *Notice of filing.* A party who files the deposition must promptly notify all other parties of the filing.

(g) *Failure to attend a deposition or serve a subpoena.* A judge may order sanctions, in accordance with § 18.57, if a party who, expecting a deposition to be taken, attends in person or by an attorney, and the noticing party failed to:

(1) Attend and proceed with the deposition; or

(2) Serve a subpoena on a nonparty deponent, who consequently did not attend.

§ 18.65 Depositions by written questions.

(a) *When a deposition may be taken—*

(1) *Without leave.* A party may, by written questions, depose any person, including a party, without leave of the judge except as provided in paragraph (a)(2) of this section. The deponent's attendance may be compelled by subpoena under § 18.56.

(2) *With leave.* A party must obtain leave of the judge, and the judge must grant leave to the extent consistent with § 18.51(b):

(i) If the parties have not stipulated to the deposition and:

(A) The deposition would result in more than 10 depositions being taken under this section or § 18.64 by a party;

(B) The deponent has already been deposed in the case; or

(C) The party seeks to take a deposition before the time specified in § 18.50(a); or

(ii) If the deponent is confined in prison.

(3) *Service; required notice.* A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title

and the address of the officer before whom the deposition will be taken.

(4) *Questions directed to an organization.* A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with § 18.64(b)(6).

(5) *Questions from other parties.* Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The judge may, for good cause, extend or shorten these times.

(b) *Delivery to the deposition officer; officer's duties.* Unless a different procedure is ordered by the judge, the party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in § 18.64(c), (e), and (f) to:

(1) Take the deponent's testimony in response to the questions;

(2) Prepare and certify the deposition; and

(3) Send it to the party, attaching a copy of the questions and of the notice.

(c) *Notice of completion or filing—*(1) *Completion.* The party who noticed the deposition must notify all other parties when it is completed.

(2) *Filing.* A party who files the deposition must promptly notify all other parties of the filing.

DISPOSITION WITHOUT HEARING

§ 18.70 Motions for dispositive action.

(a) *In general.* When consistent with statute, regulation or executive order, any party may move under § 18.33 for disposition of the pending proceeding. If the judge determines at any time that subject matter jurisdiction is lacking, the judge must dismiss the matter.

(b) *Motion to remand.* A party may move to remand the matter to the referring agency. A remand order must include any terms or conditions and should state the reason for the remand.